

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

WILLIAM RAINEY,

Plaintiff,

v.

OHIO DEPT. OF REHABILITATION
AND CORRECTIONS, et al.,

Defendant.

Case No. 3:15-cv-007

Judge Thomas M. Rose

**ENTRY AND ORDER APPROVING STIPULATION OF PARTIAL
DISMISSAL (DOC. 46) PURSUANT TO FED. R. CIV. P. 41 AND
TERMINATING DEFENDANTS' MOTION FOR JUDGMENT ON THE
PLEADINGS (DOC. 45) AS MOOT**

This case is before the Court on the Stipulation of Partial Dismissal – All Claims Against Ohio Department of Rehabilitation and Corrections Only; and All “Official Capacity” Claims; and As To State Law Claims (Doc. 46) (the “Stipulation of Partial Dismissal”) and Defendants’ Motion for Judgment on the Pleadings (Doc. 45). As stated below, the Court approves the Stipulation of Partial Dismissal (Doc. 46) and terminates the Motion for Judgment on the Pleadings (Doc. 45) as moot.

On May 26, 2015, Defendant Ohio Department of Rehabilitation and Correction (“ODRC”) and eleven individual Defendants (together, the “Moving Defendants”) brought a Motion for Judgment on the Pleadings (Doc. 45). Shortly thereafter, on June 4, 2015, Plaintiff William J. Rainey and the Moving Defendants filed the Stipulation of Partial Dismissal (Doc. 46), in which they stipulated to the following:

1. Dismissal, without prejudice, of all claims against ODRC;

2. Dismissal, without prejudice, of all claims brought against Defendants in their “official capacity” only, and not as to any Defendant in his or her “individual capacity”;
3. That the Amended Complaint (Doc. 9) is not intended to raise any claims under State law; and
4. Paragraph 8 of the Amended Complaint (Doc. 9) is amended to read as follows:
 8. Jurisdiction is upon this Court by virtue of Title 28 U.S.C. Sections 1331 and 1343(3) and (4), and venue of this action is proper under Title 28 U.S.C. Section 1391(b).

(Doc. 46 at 1.) Plaintiff and the Moving Defendants filed the Stipulation of Partial Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), which permits a plaintiff to dismiss an action without a court order by filing “a stipulation of dismissal signed by all parties who have appeared.” Here, the Stipulation of Partial Dismissal has been signed by counsel for all parties who have appeared in this action and therefore meets the requirements of Fed. R. Civ. P. 41(a)(1)(A)(ii). Accordingly, the Court finds that the claims in paragraphs 1 and 2 above are dismissed, without prejudice, and that the Amended Complaint shall not be construed to state any claim under State law. In addition, to the extent that Plaintiff seeks leave to amend Paragraph 8 of the Amended Complaint as set forth in paragraph 4 above, such leave is granted. Fed. R. Civ. P. 15 (“The court should freely give leave [to amend a pleading] when justice so requires.”).

On June 10, 2015, the Moving Defendants filed a Notice (Doc. 49) informing the Court that the Stipulation of Partial Dismissal (Doc. 46) has rendered Defendants’ Motion for Judgment on the Pleadings (Doc. 45) moot. As a result, the Moving Defendants request that the Motion for Judgment on the Pleadings (Doc. 45) be terminated and removed from the Court’s pending

motions list. (Doc. 49 at 1.) The Moving Defendants further represent that “neither Plaintiff’s counsel, nor undersigned is interested in completing the briefing schedule for Defendants’ [Motion for Judgment on the Pleadings] that absent the Stipulation having been filed, would otherwise have been appropriate.” (Doc. 49 at 2.) Since the Stipulation of Partial Dismissal has already provided the relief that the Moving Defendants sought by their Motion for Judgment on the Pleadings, and Plaintiff agrees that the motion is moot, the Court will terminate the Motion for Judgment on the Pleadings (Doc. 45) as requested.

CONCLUSION

For the reasons discussed above, the Court APPROVES the Stipulation of Partial Dismissal (Doc. 46) and TERMINATES Defendants’ Motion for Judgment on the Pleadings (Doc. 45) as moot.

DONE and **ORDERED** in Dayton, Ohio, this Friday, June 12, 2015.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE